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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

9 THE ESTATE OF DAVID SHAFER, and
10 COLLEEN SHAFER, an individual,

11 Plaintiffs,

12 v.

13 THE CITY OF SPOKANE, a municipal
corporation,

14 Defendant.

Case No.:

COMPLAINT FOR DAMAGES

JURY DEMAND

15 Plaintiff COLLEEN SHAFER, in her official capacity as the Personal
16 Representative of the ESTATE OF DAVID SHAFER and in her individual capacity,
17 by and through her attorneys, Braden Pence of MacDonald Hoague & Bayless and
18 James Herr of the Law Office of James Herr, based on information and belief, alleges
19 the following causes of action:
20

21 **I. INTRODUCTION**

22 This case arises from the fatal shooting of David Shafer by Caleb Martin, a
23 police officer employed by Defendant City of Spokane. Upon Martin's arrival at the

1 Shafer home on October 23, 2019, David Shafer had not hurt himself or anyone else,
2 nor discharged a weapon, and police had no probable cause for any crime. Although
3 Martin knew David was experiencing a mental health crisis, Martin failed to use
4 standard crisis intervention techniques including de-escalation and time, distance,
5 and cover. As a result, within minutes of his arrival, Martin unnecessarily fired two
6 rounds from an AR-15 through a quiet residential neighborhood, killing David,
7 leaving his wife Colleen a widow and his children fatherless.

8 **II. PARTIES**

9 2.1 Plaintiff, COLLEEN SHAFER is an individual and the wife of David
10 Shafer. She is the duly appointed Personal Representative of the Estate of David
11 Shafer. She brings this action in her official capacity, on behalf of the Estate of David
12 Shafer, herself, and all other statutory beneficiaries to the death of David Shafer.
13 At all times relevant to this action, she was a resident of Spokane County,
14 Washington.

15 2.2 The Estate of David Shafer is a duly probate action filed in Spokane
16 County Superior Court under cause number 22-4-01842-32.

17 2.3 Defendant CITY OF SPOKANE (“Defendant City”) is a municipal
18 corporation organized under the laws of the State of Washington. At all times
19 relevant to this action, Defendant City controlled and operated the Spokane Police
20 Department (“SPD”) and employed Caleb Martin as a law enforcement officer. At all
21 times relevant to this action, Caleb Martin was a sworn law enforcement officer
22 acting under color of law and within the course and scope of his employment with
23

1 Defendant City. Defendant City exists within the territorial jurisdiction of the
2 United States District Court for the Eastern District of Washington. Defendant City
3 accepted federal funding during and every year since 2019, the year this incident
4 occurred.

5 **III. JURISDICTION**

6 3.1 This Court has direct and supplemental jurisdiction over the federal
7 and state law claims asserted herein pursuant to 28 U.S.C. §§ 1331, 1343 and 1367.

8 3.2 Venue is appropriate in the Eastern District of Washington pursuant
9 to 28 U.S.C. § 1391 because the events and omissions giving rise to the claims
10 alleged herein occurred, and the Defendant exists, within the Eastern District.

11 3.3 All conditions precedent to this action have been complied with or
12 waived. Pursuant to RCW 4.96.020, Defendant City has had more than the required
13 60 days-notice of all state claims alleged herein.

14 **IV. FACTUAL ALLEGATIONS**

15 4.1 David Shafer's traumatic childhood included physical and sexual
16 abuse.

17 4.2 Despite struggling with depression and substance use disorder, David
18 built a meaningful and productive life.

19 4.3 In 1994, he met Plaintiff Colleen Shafer and married her in 1996. With
20 her, David raised and financially and emotionally supported five children.

21 4.4 David was a hard worker. A welder by trade, he wore out his back from
22 a lifetime of labor, resulting in several surgeries. He was ultimately declared
23

1 physically disabled.

2 4.5 A religious man, David Shafer regularly attended church, as well as a
3 support group led by church elder David Palmer.

4 4.6 In October 2019, David Shafer experienced an alcohol relapse and
5 began drinking. He scheduled an appointment to begin in-patient ipecac alcohol
6 aversion therapy at Shick Shadel in Washington, with an admission date of
7 October 25, 2019.

8 4.7 On October 23, 2019, David experienced a mental health crisis related
9 to alcohol dependency and depression.

10 4.8 With Colleen and the kids out of the house for the day, off to work and
11 school, , David began drinking.

12 4.9 By early afternoon, he was intoxicated and despondent.

13 4.10 He called Mr. Palmer for help, saying he was drunk, depressed, and
14 wanted to end it all by shooting himself.

15 4.11 This type of heavy drinking followed by talk of self-harm was a pattern
16 for David, one recognized by his family and friends as a symptom of his substance
17 use disorder and depression. However, David had never actually harmed himself
18 or attempted to take his own life.

19 4.12 Mr. Palmer decided to go to David's home and brought along another
20 church elder, William Putman. Mr. Palmer and Mr. Putman drove together to
21 the Shafer home in Mr. Palmer's red pickup truck.
22

23 4.13 On the way, Mr. Putman called 9-1-1 and reported that David was

1 intoxicated, suicidal, alone, and armed. While the 9-1-1 call was in progress, Mr.
2 Palmer and Mr. Putman contacted David a few blocks from the Shafer home.
3 David was walking down the sidewalk toward a local grocery store “to get more
4 beer.” While the 9-1-1 call was in progress, David handed his pistol over to Mr.
5 Palmer and Mr. Putman.

6 4.14 David then returned on foot to his home where, Mr. Putman reported
7 to 9-1-1, there were more firearms.

8 4.15 Mr. Palmer and Mr. Putman described David as very intoxicated. They
9 noted that he was swinging his arms in an exaggerated an uncoordinated fashion
10 and that he was having difficulty walking.

11 4.16 9-1-1 dispatched Caleb Martin and other officers employed by
12 Defendant City to respond to a report of an intoxicated and suicidal individual.

13 4.17 The first officer on scene, Martin avoided driving past the Shafer home,
14 and instead parked his marked patrol vehicle at the end of the block east of the
15 home, out of sight, with trees and vehicles providing concealment and cover.

16 4.18 Upon exiting his vehicle, Martin immediately retrieved his AR-15 long
17 gun, and began repeatedly checking to make sure it was in working order.

18 4.19 Martin was then approached by Mssrs. Palmer and Putman, who
19 handed over the pistol they had taken from David.

20 4.20 Martin then stealthily moved up the street on foot toward the Shafer
21 home where he observed David sitting on the front porch. David did not see
22 Martin and had no notice that police were on the scene.
23

1 4.21 Martin then retreated to his patrol vehicle and recontacted Palmer and
2 Putman who were sitting in Palmer's idling red pickup truck and, significantly,
3 talking on the phone with David.

4 4.22 Martin, standing outside of the truck, could hear both sides of the
5 conversation between Palmer, Putman, and Shafer because the windows were
6 rolled down and the call was connected to the truck's speakers. Martin listened
7 just long enough to hear David say that he was sitting on his porch waiting for
8 the police officers with a .22 he received from his father.

9 4.23 At that point, Martin unreasonably decided that he had heard enough.
10 He unreasonably abandoned the open line of communication with the crisis
11 subject. He unreasonably failed to engage the crisis subject in de-escalatory
12 dialog. He unreasonably failed to encourage Palmer and Putman to continue
13 dialog. He unreasonably failed to continue monitoring the call. As a result,
14 Martin unreasonably deprived himself, his colleagues, and his employer of the
15 critical information that followed.

16
17 4.24 Because Martin walked away from the open line of communication
18 with the crisis subject, Martin did not hear David ask Mr. Putman and Mr.
19 Palmer where they had gone, and why they had "abandoned" him. Martin did
20 not hear Mr. Palmer reassure David that he had not been abandoned by his
21 friends, and that they were merely parked at the end of the block. Thus, Martin
22 did not know why David ambled off his porch and down his driveway: to look for
23 his friends.

1 4.25 Having unreasonably abandoned the open line of communication,
2 Martin also unreasonably failed to coordinate with appropriate backup or
3 establish a perimeter from which they could use de-escalation and non-
4 confrontational tactics or potentially deploy non-lethal force. Instead, Martin
5 escalated the encounter to a violent confrontation rather than create opportunity
6 for time and dialogue.

7 4.26 Having seen David come off the porch, Martin crept up on David from
8 behind, pointed the AR-15 at David's back, and yelled commands at David.
9 Unreasonably, Martin did not identify himself as police.

10 4.27 As Martin made this tactical assault, Mr. Palmer and Mr. Putman
11 were still on the phone with David. When David told them he could not see them
12 west of the Shafer home, they told him they were behind him, to the east. At that
13 point, David turned around and found himself confronted by Martin: a stranger
14 in an all-black uniform, standing in firing position, and pointing a rifle at him.
15

16 4.28 Martin then shot and killed David.

17 4.29 This was Martin's second fatal shooting in just three years of
18 employment with Defendant City.

19 4.30 Mr. Palmer and Mr. Putman, who had been interacting with David for
20 some time prior to Martin's arrival, who had been speaking with David on the
21 phone until he was shot, and who had disarmed David of one firearm prior to
22 Martin's arrival, did not believe David was a danger to anyone but himself.

23 4.31 David was killed as a direct and proximate result of Martin's

1 unjustifiable acts and omissions, including but not limited to the failure to utilize
2 standard de-escalation techniques defined by Defendant City policies and state-
3 mandated de-escalation training and the failure to gather reasonably available
4 information before rushing into a dangerous situation.

5 4.32 Defendant City, through its employees, knew, based upon information
6 relayed to through 9-1-1, that David was suicidal, and depressed. A reasonable
7 officer should have known based upon that information that David was therefore
8 a person with a ‘disability.’

9 4.33 Martin deprived David of a reasonable accommodation for his mental
10 disabilities—the accommodation of utilizing standard crisis intervention
11 techniques which are a vital part of all basic law enforcement training given in
12 Washington State, including the use of de-escalation and communication,
13 providing a buffer zone of space to avoid crowding, approaching slowly and at a
14 reasonable distance, having a plan, actively listening, and presenting a calm and
15 respectful demeanor.
16

17 4.34 Defendant City sent Martin to a scene involving no reported injuries
18 or crime to provide positive assistance to a person in crisis. When Martin arrived,
19 David was alive, uninjured, and no danger to himself or anyone else. Although
20 Martin was called to provide positive assistance to a person in crisis, he caused
21 the situation to rapidly deteriorate, and within minutes killed the person he was
22 supposed to help.
23

1 friends and church elders, Defendant City and its agents knew or should have
2 known he was a disabled person suffering from a mental health crisis.

3 5.7 Having been regarded as a qualified individual by a member/employee
4 of Defendant SPD, David was entitled to receive the same law enforcement services
5 provided to non-disabled individuals by Defendant City.

6 5.8 In particular, David was entitled to the benefit of an adequately
7 trained officer who performed official duties consistent with that training and
8 without discrimination on the basis of a disability, rather than one who acted and
9 treated him in the manner Martin did.

10 5.9 As reflected in the facts set forth above, Defendant City, via its agent
11 Caleb Martin, discriminated against David based upon his actual, and perceived
12 disabilities and excluded him from receiving the benefit of a public entity's services:
13 a non-harmful crisis intervention during a mental health crisis.

14 5.10 As reflected by the facts set forth above, Defendant City failed to
15 provide a reasonable accommodation for David. A reasonable accommodation
16 includes following standard and legally-required crisis intervention training which
17 employ de-escalation techniques, such as using distance and time to control the pace
18 of the interaction to allow for planned, deliberate responses and open
19 communication with David, as well as tactics such as requesting (and obtaining)
20 necessary personnel and equipment to address the situation non-lethally, assigning
21 lethal and less-lethal responsibility to the tactical response team, and engaging in
22 nonconfrontational communication.
23

1 5.11 Defendant City's failure to provide David with a reasonable
2 accommodation was a foreseeable and proximate cause of his death.

3 5.12 At all times when Defendant City's agents were interacting with
4 David, no reasonable exigency existed that would have prevented a reasonable
5 accommodation.

6 **SECOND CAUSE OF ACTION**
7 **(Federal Law Claim – Violation of Section 504 of the Rehabilitation Act,**
8 **29 U.S.C. § 794)**

9 5.13 As reflected in the facts set forth above, Defendants City of Spokane
10 and SPD are liable to Plaintiffs for compensatory and punitive damages for violating
11 David's right to be free from discrimination on the basis of an actual or perceived
12 disability, as well as failing to provide a reasonable accommodation for a known
13 disability under the Rehabilitation Act.

14 5.14 Under Section 504 of the Rehabilitation Act, "[n]o otherwise qualified
15 individual with a disability in the United States...shall, solely by reason of her or
16 his disability, be excluded from participation in, be denied the benefits of, or be
17 subjected to discrimination under any program or activity receiving Federal
18 financial assistance..."

19 5.15 A "disability" under Title V of the Rehabilitation Act is given the same
20 definition as the Americans with Disabilities Act (ADA), which includes "being
21 regarded as having such an impairment."

22 5.16 Defendants City of Spokane and SPD are public entities that receive
23 federal funds.

1 5.17 Martin, in responding to a 9-1-1 call informing him of a suicidal
2 individual, and in speaking to Decedent David Shafer's church elders on the scene,
3 knew he was suffering from a mental health crisis.

4 5.18 Having been regarded as a qualified individual by a
5 member\employee of Defendant SPD, David was entitled to receive the same law
6 enforcement services provided to other non-disabled individuals by Defendants City
7 of Spokane and SPD.

8 5.19 In particular, David was entitled to the benefit of adequately trained
9 officers who are able to engage with disabled members of the community to the same
10 extent as non-disabled individuals.

11 5.20 As reflected in the facts set forth above, Defendants SPD and the City
12 of Spokane failed to train, supervise, or discipline Martin in recognizing symptoms
13 of disability, discriminated against David due to his perceived disability, and
14 excluded David from receiving the benefit of a public entity's services: non-harmful
15 interactions with police officers.

16 5.21 As reflected in the facts set forth above, Defendants SPD and the City
17 of Spokane failed to provide a reasonable accommodation for David by failing to
18 train their officers in Crisis Intervention techniques as required by Defendants' own
19 internal policies.

20 5.22 At all times when Martin was interacting with David, no reasonable
21 exigency existed that would have prevented Defendant from engaging in Crisis
22 Intervention practices.
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1 **THIRD CAUSE OF ACTION**
2 **(State Law Claim – Negligence)**

3 5.23 As reflected in the facts set forth above, Defendant City is liable to
4 Plaintiffs for the common law tort of negligence. Defendant and its employee Caleb
5 Martin owed David Shafer the duty of reasonable care in processing and responding
6 to a call involving a mental health crisis situation. Defendant's breach of that duty
7 was a proximate cause of David's fatal injuries. Under state law, Defendant City is
8 vicariously liable for the negligent acts of its employees carried out within the course
9 and scope of their employment, including all of the acts of Caleb Martin alleged
10 herein.

11 **VI. JURY DEMAND**

12 Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury of all issues
13 to triable under the law.

14 **VII. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs prays for relief as follows:

16 7.1 Compensatory damages, including without limitation all recoverable
17 economic and non-economic damages to David Shafer, the Estate of David Shafer,
18 and all statutory beneficiaries thereto, caused by the events alleged herein,
19 including but not limited to loss of consortium;

20 7.2 Costs, including reasonable attorneys' fees and litigation expenses,
21 under 42 U.S.C. § 12205 and to the extent otherwise permitted by law; and

22 7.3 Such other relief as may be just and equitable.

23 DATED this 5th day of October 2022.

1 s/Braden Pence

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